



To: mpetrelis@aol.com@SFGOV,
Cc:
Bcc:
Subject: Re: IDR: Emails about Gascon's Nov 13 fundraiser
From: Matt Dorsey/CTYATT - Wednesday 12/03/2014 10:40 AM

Mr. Petrelis,

You asked about the basis for this office's general policy -- which is consistent with virtually all investigative agencies we're aware of -- to neither confirm nor deny the existence of investigations. You also asked that I explain why this no comment policy is used by our office, and the legal rationale for it.

First, in legal terms, to the extent anyone in this office drafted documents evaluating facts, evidence or exchanged communications relating to an incident under investigation, such records would constitute confidential attorney work product, and would not be subject to disclosure. The legal authority for that withholding is the California Public Records Act (Gov't Code §6254(k)) and San Francisco Sunshine Ordinance (S.F. Admin. Code §67.21(k)), in addition to the California Code of Civil Procedure §2018.030, which protects from disclosure any writing that reflects an attorney's impressions, conclusions, opinion, or legal research or theories.

Beyond the legal authority for withholding in public records requests related to investigations, the general policy to neither confirm nor deny the existence of investigations is just that -- a general policy, and not a legal requirement. The policy is considered prudent for public sector investigations for multiple reasons, including the fact that the release of such information could compromise the integrity of investigations by, for example, inducing the destruction of evidence or fabrication or tailoring of witnesses' accounts. One can additionally imagine scenarios in which the announcement of an investigation, particularly at its preliminary stages, could violate the privacy rights of an individual or even unfairly -- and perhaps even actionably -- tarnish that individual's reputation or future employability. While it is true that no law generally prohibits disclosure of investigations, it is also true that no law compels disclosure of investigations, either. It is a general policy, commonly observed, but also considered on a case-by-case basis.

As a *general*/policy, of course, there are rare exceptions. The City Attorney's decision about whether to make such an exception, and announce the existence of an investigation, is discretionary. Examples of exceptions that come to mind include our CitiApartments case from several years ago, in which our announcement of our then-on-going investigation into the Lembi tenant harassment and eviction scheme proved instrumental to having many more victims come forward to aid our litigation than probably would have otherwise. Similarly, when we announced the launch of our investigation into the State of Nevada's "patient dumping" practices early last year, we publicly acknowledged our hope that news coverage would convince victims and witnesses to come forward to assist us. And a number of them did.

I hope this answers your questions regarding our office policies. If you have further questions, feel free to let me know.

Best,
MATT DORSEY
Press Secretary

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mpetrelis

Please explain to me why this no comment polic...

11/26/2014 10:50:23 AM

From: mpetrelis@aol.com
To: Matt.Dorsey@sfgov.org,
Date: 11/26/2014 10:50 AM
Subject: Re: IDR: Emails about Gascon's Nov 13 fundraiser

Please explain to me why this no comment policy is used by your office and the legal rationale for it. Seems that public officials are given special privileges when they break the law and the public is denied info about investigations.

But if an ordinary citizen is under investigation, well, rest assured the sheriff and the police and the DA will waste not time blabbing to the media and anyone who'll listen about the alleged crime.

Would like to see the law that allows your office to withhold information about investigations. Where in the CA penal code is it spelled out that you can do this? I'd like to dig further and not accept your statement of it simply being a "general policy" of the office. Is there a statute permitting this special privilege?

-----Original Message-----

From: Matt.Dorsey <Matt.Dorsey@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Sent: Wed, Nov 26, 2014 9:29 am
Subject: Re: IDR: Emails about Gascon's Nov 13 fundraiser

The memo is entitled "Political Activity by City Officers and Employees," and it is updated, distributed and posted to the City Attorney's website every election season. You can find it under the "Legal Opinions" tab, and the direct URL is:
<http://www.sfcityattorney.org/Modules>ShowDocument.aspx?documentID=1737>. However, for your convenience, I've attached it here.

As to your question about whether there will be an investigation into the matter, it's one I'm unable to answer. Like most offices with investigative authority, it is the general policy of the office to neither confirm nor deny the existence of investigations.

I hope this helps. If you have further questions, feel free to let me know.

Best,
MATT DORSEY

Press Secretary

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(See attached file: OP-2014-09-03-POLITICAL-ACTIVITY.PDF)

From: mpetrelis@aol.com
To: Matt.Dorsey@sfgov.org,
Date: 11/25/2014 05:59 PM
Subject: Re: IDR: Emails about Gascon's Nov 13 fundraiser

Mr. Dorsey,

Thanks for this info and photo of the invitation.

Can you tell me, please, if this 10 page memo mentioned in the Chronicle is on the CA's site? I've looked and couldn't locate it on your site:

In September, City Attorney Dennis Herrera issued a 10-page memo with updated rules governing political activity, and he warned that "city officers and employees may not solicit political contributions from other city officers and employees, even while off duty."

Also, regardless of Gascon returning the funds, will there be an investigation into this matter since the DA and other city officers did solicit political contributions from other city officers?

Lemme know.

Michael Petrelis

-----Original Message-----

From: Matt.Dorsey <Matt.Dorsey@sfgov.org>
To: mpetrelis <mpetrelis@aol.com>
Sent: Tue, Nov 25, 2014 3:40 pm
Subject: Re: IDR: Emails about Gascon's Nov 13 fundraiser

Michael,

This acknowledges receipt of your immediate disclosure request. I have a single responsive record -- well, two, technically, but they're part of the same email -- and I will forward that to you as a separate email momentarily. That record is actually a photo of the invitation taken by Chronicle reporter Andy Ross, who sent it to my cell phone (so that I could understand what he was asking me about). I then emailed the photo to my work account, and then forwarded to Deputy City Attorney David Pfeifer for his records.

We provided no comment in response to the Chronicle's inquiry, and I am aware of no other records responsive to your request. Just the same, I will forward your IDR to other attorneys in the office who handle such matters so that they, too, can check their records for anything responsive.

Best,
MATT DORSEY
Press Secretary

P.S. -- Please note that Gabriel Zitrin has new responsibilities in the office, which do not include handling Sunshine requests.

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From: mpetrelis@aol.com
To: Matt.Dorsey@sfgov.org, Gabriel.Zitrin@sfgov.org,
Date: 11/25/2014 03:12 PM
Subject: IDR: Emails about Gascon's Nov 13 fundraiser

Dear Matt Dorsey and Gabriel Zitrin,

This is an immediate disclosure request for copies of any and all emails about DA George Gascon's Nov. 13 fundraiser at Ted's Grill, sent or received by anyone in the City Attorney's office.

My IDR covers the period from Oct. 1, 2014, through November 25, 2015.

If you have any questions, shoot them my way.

Please acknowledge receipt of this letter by the close of business today.

Regards,
Michael Petrelis